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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,929	07/11/2003	Li-Fu Wu	MR2723-296	3014

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EXAMINER
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METZMAIER, DANIEL S

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/616,929

Applicant(s)

WU, LI-FU

Examiner

Daniel S. Metzmaier

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1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1-6 are pending.

#### ***Drawings***

1. The drawings were received on July 11, 2003. These drawings are acceptable.

#### ***Specification***

2. The use of the trademark has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks. See MPEP 608.01(v).

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "componet" in line 18 of claim 1 is misspelled.

In the claims, it is unclear whether the construction parts are physically different or merely different components. It is unclear what is the relationship between said construction parts.

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In claims 3-4 and 5-6, the terms as an example "AURORA PINK ZQ-11" and other trademarks therein are considered indefinite since the relationship between a trademark and the product it identifies is sometimes indefinite, uncertain or arbitrary. The formula or characteristics of the product may change from time to time and yet it may be sold under the same trademark. In the claims, every element or ingredient of the should be set forth in positive, exact, intelligible language, so that there will be no uncertainty as to what is meant. Arbitrary trademarks which are liable to mean different things at the pleasure of manufactures do not constitute such language. See *Ex parte Kattwinkel*, 12 U.S.P.Q. 11 and MPEP 608.01(v).

The examiner suggests the deletion of the trademarks from the claims or the incorporation of generic terminology into these claims. Applicants should note however, that the examiner will allow amendment of the trademarks only when accompanied by a proper showing that the amended subject matter is what the trademarks represent, i.e. data sheets from manufactures.

In claim 4, "a type of fluorescer or an incorporation ratio of at least one of said construction parts or said outer container is different from those of other of said construction parts", is indefinite. It is unclear what the "incorporation ratio" of construction parts is with or is based.

In claims 3 and 5-6, the two alternative groups (Markush groupings) should be precede the last species with "and"; and set the two groupings apart by punctuation, such as a semi-colon.

***Claim Rejections - 35 USC § 102 / 35 USC § 103***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mohan et al, US 4,379,320. Mohan et al (figures, columns 1-3, examples, and claims) disclose the chemiluminescent device instantly claimed. Mohan et al (column 2, lines 28 et seq ; and examples) disclose the first fluorecer including at least 9,10-bis(phenylethynyl)-anthracene and the second fluorecser including Rhodamine B or ROCKET RED Z-13 to be incorporated (column 1, lines 46 et seq) into the polyethylene wrapped around the primary chemiluminescent device.

Mohan et al (figures) discloses a sleeve open at one end and closed at the opposite end thereto. Mohan et al discloses incorporating the second fluorescent material into the polyethylene sleeve to cover the primary chemiluminescent device but

is silent regarding incorporating fluorescer into the cap or the activating handle. Said arrangement is deemed to read on the claimed arrangement.

Claims 4-6 have been included herein since the Mohan et al (column 2 to 3, lines 64 to 12, respectively) disclose the concentration of the secondary fluorescer is dependent on the thickness of the polyolefin employed. This is deemed to read on an incorporation ratio that is dependent on the thickness of the polymer and would vary among the components of the device.

To the extent the ROCKET RED Z-13 differs from the claimed fluorescers set forth in claim 3, Mohan et al discloses several known fluorescers and the relationship between the first and second fluorescers. It would have been obvious to one of ordinary skill in the art at the time of applicants' invention to employ the same or related fluorescer having the same color and/or absorption/fluorescence properties.

To the extent the Mohan et al reference differs from the claims in the particular relationship between the device components, it would have been obvious to one of ordinary skill in the art at the time of applicants' invention to vary the use of the second fluorescer in the different construction parts for the advantage of cost since the fluorescers are the more expensive component of the devices shown in the Mohan et al reference. Furthermore, the incorporation of a fluorescer in the activator handle defies logic since the handle would be expected to be held and could not fluoresce due to lack of exposure based on the hands function as a barrier to the first fluorescers emissions.

To the extent applicants' claims were intended to include multiple secondary fluorescers, the use of multiple fluorescers is known in the art for visual effect and would

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have further been obvious as a point of law. It is generally prima facie obvious to use in combination two or more ingredients that have previously been used separately for the same purpose in order to form a third composition useful for that same purpose. *In re Kerkhoven*, 626 F.2d 846, 205 USPQ 1069 (CCPA 1980); *In re Pinten*, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971); *In re Crockett*, 279 F.2d 274, 126 USPQ 186 (CCPA 1960). As stated in *Kerkhoven* and *Crockett*, the idea of combining them flows logically from their having been individually taught in the prior art.

### ***Claim Rejections - 35 USC § 103***

8. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mohan et al, US 4,379,320, in view of Chopdekar et al, US, 5,705,103, and Cranor et al, US 6,106,129. Mohan et al (figures, columns 1-3, examples, and claims) disclose the chemiluminescent device as set forth in the preceding rejection over the same reference.

Mohan et al differs from claims 4-6 in the use of multiple fluorecscers in the outer packaging system.

Chopdekar et al (column 2, lines 423 et seq) discloses incorporating oxalate esters and fluorescers in the polymers to control the duration of the lighting effect. Chopdekar et al (column 5, lines 3-15) disclose making multicolor devices by the incorporations of multiple different fluorescers into the substrates.

Cranor et al (figures and column 3, lines 1-29) discloses the formation of multiple colored devices by the incorporation of a second fluorescer into a polyolefin polymer,

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which is activated when the light from the chemiluminescent reaction impinges the secondary fluorescers. The result is an advantageous light effect having different colored light.

These references are combinable because they teach chemiluminescent compositions and devices. It would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ multiple fluorescers in the Mohan et al device as shown in the art in the Chopdekar et al and/or Cranor et al references for the advantage of a lighting effect.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (571) 272-1089. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Daniel S. Metzmaier**  
**Primary Examiner**  
**Art Unit 1712**

DSM